



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 14, 2016

BY HAND & ECF

Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Sean Stewart,*
S1 15 Cr. 287 (LTS)

Dear Judge Swain:

As the Court is aware, the parties have filed a joint request to charge which reflects numerous disagreements between them. The principal disagreements relate to the proposed instructions regarding violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and, in particular, to (1) the articulation of the *mens rea* a tipper-defendant must have concerning the tippee's plan to trade securities and (2) the "personal benefit" element. To assist the Court in resolving the disagreements over these elements, the Government respectfully submits the following, enclosed herewith:

1. Copies of the jury charges given in the cases principally cited in the parties' joint request, namely:
 - a. *United States v. Bonventure*, No. 10 Cr. 228 (LTS) (S.D.N.Y. 2014);
 - b. *United States v. Riley*, No. 13 Cr. 339 (VEC) (S.D.N.Y. 2014);
 - c. *United States v. Martoma*, No. 12 Cr. 973 (PGG) (S.D.N.Y. 2014);
 - d. *United States v. Steinberg*, No. 12 Cr. 121 (RJS) (S.D.N.Y. 2013);
 - e. *United States v. Whitman*, No. 12 Cr. 125 (JSR) (S.D.N.Y. 2012); and
 - f. *United States v. Gupta*, No. 11 Cr. 907 (JSR) (S.D.N.Y. 2012);
2. Copies of the Second Circuit's opinions in *United States v. Gansman*, 657 F.3d 85 (2d Cir. 2011), and *SEC v. Obus*, 693 F.3d 276 (2d Cir. 2012), which discuss tipper scienter;
3. A copy of the Second Circuit's opinion in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), which discusses personal benefit; and

4. A copy of the only post-*Newman* insider trading jury charge of which the Government is aware in this District, issued by Judge Rakoff in *SEC v. Payton*, 14 Civ. 4644 (JSR) (S.D.N.Y. 2016).

In addition, the Government stands ready to furnish the Court with any briefing it believes may be helpful in resolving the disagreements over the charge.

Respectfully submitted,

PREET BHARARA
United States Attorney

by: /s/
Sarah Eddy McCallum/Brooke E. Cucinella
Assistant United States Attorneys
(212) 637-1033/2477

cc (by email): Mark Gombiner, Esq.
Martin Cohen, Esq.